

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION**

**NATIVE AMERICAN ARTS, INC.,**

Plaintiff,

v.

**BUD K WORLDWIDE, INC.,**

Defendant.

Civil Action 7:10-CV-124 (HL)

**ORDER**

This case is before the Court on Defendant's Motion to Dismiss For Lack of Article III Standing (Doc. 31). Defendant makes a factual attack on the Court's subject matter jurisdiction over this case. Defendant contends that Plaintiff cannot show an injury-in-fact as required by Article III of the United States Constitution and cannot satisfy the doctrine of prudential standing.

Factual attacks to subject matter jurisdiction "challenge the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits are considered." McElmurray v. Consol. Gov't of Augusta-Richmond County, 501 F.3d 1244, 1251 (11th Cir. 2007) (internal quotations omitted).

"In a factual challenge, the district court must provide the plaintiff with an opportunity for discovery and for a hearing that 'is appropriate to the nature of a motion to dismiss.'" Rance v. D.R. Horton, Inc., 316 Fed. App'x 860, 862 (11th Cir. 2008) (quoting Williamson v. Tucker, 645 F.2d 404, 414 (5th Cir. 1981)).

It is ordered that discovery in this case is stayed, with the limited exception that the parties shall conduct discovery aimed at determining if this Court has subject matter jurisdiction. This limited discovery period will expire on May 13, 2011. The Court will hold a hearing in late May or early June, and a date will be set closer to that time. The Court defers ruling on Defendant's Motion to Dismiss For Lack of Article III Standing (Doc. 31).

**SO ORDERED**, this the 22<sup>nd</sup> day of February, 2011.

*s/ Hugh Lawson*  
**HUGH LAWSON, SENIOR JUDGE**

mbh